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December 29, 2000

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, S.W.
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Request for Review of the Decision of the Universal Service Administrator
School District of Philadelphia, Philadelphia, PA
CC Docket No. 96-45, CC-Docket No. 97-21, File No. SLD-446637

Dear Ms. Salas:

On behalf of the School District of Philadelphia ("Philadelphia"), this will supplement the above-referenced Application for Review, filed August 24, 2000, to include the attached excerpts from the recently revised Eligible Services List ("Revised List"), issued November 16, 2000 by the Schools and Libraries Division ("SLD"). The Revised List, for the first time, deals expressly with the question of the eligibility of a DHCP Server, indicating that it is ineligible for funding. The Revised List further reports that this is a "modification or clarification of product or service eligibility as of November 17, 2000."

As set forth in Philadelphia's pending Application for Review, Philadelphia believes that this new classification is an incorrect interpretation of FCC funding eligibility rules. However, even assuming arguendo that the new classification were to be found to be a reasonable exercise of the SLD's discretion, it obviously cannot be retroactively applied to applications filed and processed prior to the announcement of the new classification. See, e.g., Service Provider Identification Number (SPIN) Change Appeals, DA00-2629, released November 22, 2000, ¶ 5. Rather, FCC policy requires the SLD to apply the published policies in effect at the time Philadelphia's application was filed. Under prior SLD published policies, the only conclusion that could be drawn was that the DHCP Server was an eligible piece of equipment. See, Philadelphia Application for Review, pp. 3-6. This is now confirmed by the SLD's Revised List adopting a new and different eligibility classification.

The Revised List further shows beyond question that the SLD's application of its 30% policy in this case to deny Philadelphia's entire FRN was arbitrary and incorrect. Due to the SLD's heavy workload, the 30% policy has been found by the FCC to be appropriate as "administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and

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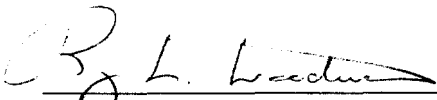
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procedures.” Request for Review by the Anderson School, Staatsburg, New York, DA00-2630, released November 24, 2000, ¶ 8. Its legitimate application is therefore limited to situations where the applicant was or “...should have been aware that it was seeking discounts for ineligible internal connections.” Id. Philadelphia filed its application in January of 2000, long before the SLD’s November 17 clarification or modification of policy declaring the DHCP Server to be ineligible. Philadelphia had no basis to know or even suspect that the DHCP Server would be deemed to be ineligible by the SLD. The 30% policy therefore cannot be lawfully applied in this case.

For these reasons, the SLD’s funding denial should be reversed and remanded for processing consistent with FCC rules and published SLD standards in effect at the time Philadelphia’s application was filed.

Respectfully submitted,

SHOOK, HARDY & BACON, LLP

By: 

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Attorneys for School District of Philadelphia

Attachments

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SCHOOLS AND LIBRARIES^{2, 3}

Eligible Services List

The primary purpose of the services for which support is sought must be the delivery of services to the classrooms or other places of instruction at schools and libraries that meet the statutory definition of an eligible institution. Support for the administrative functions of library or education programs is permitted so long as the services are part of the network of shared services for learning. Support will be limited to services delivered to the onsite educational facility or facilities.⁴

The eligibility of a product/service is not solely dependent on the item itself, but also on the use for which it is intended. The use of an otherwise eligible product/service by an ineligible entity, or for an ineligible purpose, is not eligible for discount under the "E-Rate" program. The eligibility of the products/services identified on this list assumes their use is intended to be by eligible entities, for eligible purposes.

The Paragraph Cite column represents the paragraph from FCC 97-157, FCC 97-420, Appendix or the FCC Public Notice "Updated Frequently Asked Questions on Universal Service and the Snowe-Rockefeller-Exon-Kerrey Amendment" that is most closely associated with the particular service. The information in the column is not intended to be all inclusive and other references should be considered.

Items in **Bold** indicate a modification or clarification of product or service eligibility as of November 17, 2000.

| SERVICE | ELEMENT/ DESCRIPTION | ELIGIBLE YES/NO | PARAGRAPH CITE |
|---|----------------------|--------------------|-------------------|
| TELECOMMUNICATIONS SERVICES | | | |
| To be eligible for support, Telecommunications Services must be provided by an eligible Telecommunications Service provider, that is, one who provides Telecommunications Service on a common carriage basis. A provider/carrier is providing services on a common carriage basis if it holds itself out to provide service generally to the public for a fee. A State commission may upon its own motion or upon request designate a common carrier that meets the requirements as set forth in the Communications Act of 1934, Section 214 {47 U.S.C. 241} (e) (2) Designation of Eligible Telecommunications Carriers. | | | |

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997). ERRATA released 6/04/97 and 12/24/97.

² Eligible schools and libraries should receive discounts of between 20 and 90 percent on all Telecommunications services, Internet access and internal connections provided by Telecommunications carriers.

³ Eligible schools and libraries will be permitted to apply their relevant discounts to information services provided by entities that consist of:

- (i) the transmission of information as a common carrier;
- (ii) the transmission of information as part of a gateway to an information service, where that transmission does not involve the generation or alteration of the content of information but may include data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access information services that do not affect the presentation of such information services to users; and
- (iii) electronic mail services [e-mail].

⁴ Formal position statement adopted by the Schools and Libraries Corporation Board of Directors on November 20, 1997.

| | | | |
|-------------------------------|--|---|--|
| Servers | <p>A computer or device on a network that manages network resources. For example, a file server is a computer and storage device dedicated to storing files. Any user on the network can store files on the server.</p> <p>Caching Server CD Rom Server DHCP Server Domain Name Server "E" Mail Server File Server Firewall Server Communications Server Terminal Server Web Server</p> | <p>No No No Yes Yes Yes No Yes Yes Yes</p> | <p>461 461 461 460 460 460 459, 460 460 460 459,460</p> |
| SNMP System Management Module | Simple Network Management Protocol adapter that allows for SNMP to be introduced into the Ethernet network to manage devices and their interaction with TCP/IP. | Yes | <p>459 460</p> |